

RESTRICTIVE COVENANT

OWNER: Board of Regents of the University of Texas System

ADDRESS: 210 W. 6<sup>th</sup> Street, Austin, TX 78701

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: A 45.783 acre tract of land, more or less, out of the James Rogers Survey No. 19 and the James P. Wallace Survey No. 18, Travis County, the tract of land being more particularly described by metes and bounds in Exhibit "A" incorporated into this covenant.

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds the total traffic generation for the Property as specified in that certain Traffic Impact Analysis ("TIA") prepared by WHM Transportation Engineering Consultants, Inc., dated September 9, 2004, or as amended by the Owner's traffic consultant and approved by the Director of the Watershed Protection and Development Review Department (the "Director"). Any development on the Property which requires a building permit or site plan to be approved by the City of Austin is subject to the recommendations contained in the memorandum from the Transportation Review Section of the Watershed Protection and Development Review Department, dated November 3, 2004 attached hereto as Exhibit "B", and any other recommendations approved by the Director consistent with the amended TIA. The TIA shall be kept on file at the Watershed Protection and Development Review Department.
2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against

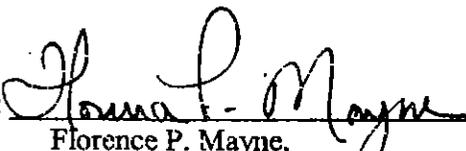
such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions; however, in any such enforcement proceedings all of the laws of the State of Texas shall apply and the first sentence of this Section 2 shall not constitute a waiver of any rights or defenses the party in question, its agents, employees or contractors may enjoy.

3. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
4. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
5. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the 1<sup>st</sup> day of December, 2004.

**OWNER:**

**Board of Regents  
of the University of Texas System**

By:   
\_\_\_\_\_  
Florence P. Mayne,  
Executive Director of Real Estate,  
University of Texas System

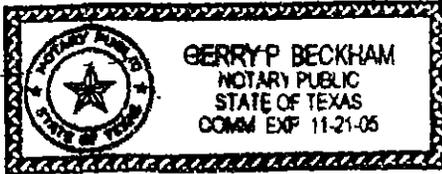
**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Assistant City Attorney  
City of Austin

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 1<sup>st</sup> day of December, 2004, by Florence P. Mayne, Executive Director of Real Estate of the University of Texas System, on behalf of the Board of Regents of the University of Texas System.



Gerry P. Beckham  
Notary Public, State of Texas

After Recording, Please Return to:  
City of Austin  
Department of Law  
P. O. Box 1088  
Austin, Texas 78767  
Attention: Diana Minter, Legal Assistant



4. a distance of 86.10 feet along the arc of a curve to the right whose radius is 5454.58 feet, central angle is  $00^{\circ}54'16''$  and whose chord bears  $N13^{\circ}08'37''E$ , 86.09 feet to a concrete highway monument found,
5.  $N51^{\circ}41'59''E$ , 89.71 feet to a point, and
6.  $N86^{\circ}40'02''E$ , 81.08 feet to a  $3/4$  inch iron rod found on the south R.O.W. line of said Braker Lane;

THENCE, departing said east R.O.W. line, along the said south R.O.W. line, the following two (2) courses:

1.  $S50^{\circ}51'14''E$ , 507.89 feet to a  $1/2$  inch iron rod found, and
2.  $S60^{\circ}47'39''E$ , 155.96 feet to the POINT OF BEGINNING containing 45.783 acres of land more or less.

*W. H. Ramsey*

11-18-03

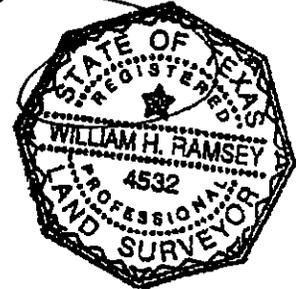


Exhibit "B"



**Date:** November 3, 2004  
**To:** Sherrl Gager, Case Manager  
**CC:** Heidi Ross, P.E., WHM Transportation Engineering  
**Reference:** The Shops at Arbor Walk, C14-04-0146

The Transportation Review Section has reviewed the Traffic Impact Analysis for the Shops at Arbor Walk, dated September 2004, prepared by Heidi Ross, P.E., WHM Transportation Engineering, and offers the following comments:

**TRIP GENERATION**

The Shops at Arbor Walk is a 45.7-acre development located in northwest Austin at the southeast corner of Loop 1 (MoPac) and Braker Lane.

The property is currently undeveloped and zoned Public (P). The applicant has requested a zoning change to Commercial Highway (CH). The estimated completion of the project is expected in the year 2008.

Based on the standard trip generation rates established by the Institute of Transportation Engineers (ITE), the development will generate approximately 47,830 unadjusted average daily trips (ADT).

The table below shows the adjusted trip generation by land use for the proposed development:

LAND USE	Size	ADT	AM Peak		PM Peak	
			Enter	Exit	Enter	Exit
Discount Store	240,000	11,159	114	54	504	504
Shopping Center	240,000	7,916	106	68	354	383
High Turnover Restaurant	20,000	1,327	63	58	69	44
Fast Food Restaurant w/ Drive Thru	40,000	9,020	498	478	324	299
<b>Total</b>		<b>29,424</b>	<b>781</b>	<b>658</b>	<b>1,251</b>	<b>1,230</b>

**ASSUMPTIONS**

1. Traffic growth rates provided by the City of Austin were as follows:

<b>Roadway Segment</b>	<b>%</b>
All Roads	1.5%

2. In addition to these growth rates, background traffic volumes for 2003 included estimated traffic volumes for the following projects:

The Domain and Multek Retail	
Multek Subdivision	C8-04-0006.0A
Braker Pointe Subdivision	C8-03-0121.0A
Domain Building 5 Part B	SP-00-2579B
KB Home Annex Building	SP-01-0327C
Kramer Center	SPC-02-0020A
North Austin Service Center	SP-01-0018C
Braker Lane Public Storage	SP-02-0039C
Wienerschnitzel #731	SP-03-0130C
Tivoli Phase 1, 2, & 3	SP-00-2372C
Gracy Farms	SP-03-0432C

3. Reductions were taken for pass-by for the following uses:

<b>Land Use</b>	<b>Pass-By Reductions %</b>	
	<b>AM</b>	<b>PM</b>
Discount Store	17%	17%
Shopping Center	34%	34%
High Turnover Restaurant	42%	42%
Fast Food Restaurant w/ Drive Through	49%	50%

4. A 10% reduction was taken for internal capture for the high turnover restaurant and the fast food restaurant.
5. No reductions were taken for transit use.

**EXISTING AND PLANNED ROADWAYS**

**US 183** – This roadway is classified as a six lane divide freeway. The 2002 traffic volumes on US Highway 183 were approximately 180,000 vehicles per day (vpd).

**Loop 1 (MoPac)** – This roadway is located on the west side of the property. This facility is classified as a six lane divide freeway within the sites vicinity. The 2002 traffic volumes on this roadway were approximately 110,000vpd.

**Loop 360 (Capital of Texas Highway)** – This roadway is classified as a six lane divided major arterial and carried approximately 51,640vpd in 2002. Loop 360 is in the Bicycle Plan as a Priority 1 route.

**Braker Lane** – This roadway is classified as a six lane divided major arterial and is located on the north side of the subject property. The 1997 traffic volumes for this facility east and west of Loop 1 were approximately 38,350 and 30,710vpd respectively. Braker Lane is the Bicycle Plan as a Priority 1 route.

**FM 1325 (Burnet Road)** – This roadway is classified as a four lane divided major arterial. The 2002 traffic volumes for FM 1325 were 35,000vpd.

**Stonelake Boulevard** – This roadway is a six lane divided collector roadway. The 1997 traffic volumes on this roadway were 6,330vpd.

### TRAFFIC ANALYSIS

The impact of site development traffic on the existing area roadways was analyzed. Two time periods and travel conditions were evaluated:

- 2004 Existing Conditions
- 2008 Build-Out Conditions

### INTERSECTION LEVEL OF SERVICE (LOS)

The TIA analyzed 13 Intersections, 9 of which are or would be signalized.

<b>Table 4. Level of Service</b>				
Intersection	2004		2008	
	AM	PM	AM	PM
Loop 360 and US 183 EFR*	C	D	C	D
Loop 360 and US 183 WFR*	C	C	C	D
Loop 1 EFR and Loop 360*	C	C	C	D
Loop 1 WFR and Loop 360*	C	C	C	D
Loop 1 EFR and Braker Lane*	B	C	C	C
Loop 1 WFR and Braker Lane*	C	C	D	D
Loop 360 and Stonelake Boulevard*	C	C	C	B
Burnet Road and Braker Lane*	D	E	D	D
Domain Driveway/JJ Pickie Center (Road A) and Braker Lane*	B	A	C	C
Loop 1 EFR and Existing Driveway (Driveway C)	A	A	A	B
Loop 1 EFR and Driveway A			A	F
Loop 1 EFR and Driveway B			C	C
Driveway D and Braker Lane			A	A

\* = SIGNALIZED

**RECOMMENDATIONS**

1) Fiscal Is required to be posted for the following improvements prior to the 3<sup>rd</sup> reading at City Council:

Intersection	Improvements	Total Cost	Pro Rata Share %	Pro Rata Share \$
Burnet Road and Braker Lane	NB Construct Dual left turn lanes NB Extend right turn bay length	\$129,461	4.3%	\$5,567
Loop 1 WFR and Loop 360	SB Restripe to provide 1 left/through, 1 through, and 1 right	\$6,472	14.4%	\$932
Domain Driveway/JJ Pickie Research Center (Road A) and Braker Lane	Relocate existing signalized intersection		TBD	
	NB - Construct dual left turn lanes			
	SB - Construct dual left turn lanes			
	EB and WB - Construct dual left turn lanes			
	WB - Acceleration lane			
Loop 1 EFR and Loop 360	NB Restripe to provide 1 left, 2 through	\$6,807	22.2%	\$1,511

TBD = To Be Determined

- 2) Right-of-way dedication will be required at the time of site plan for the acceleration and deceleration lanes along Loop 1.
- 3) Additional right-of-way dedication and/or reservation may be required at the time of subdivision and/or site plan in accordance with the roadway plan.
- 4) Approval from TXDOT and DPWT is required to be received prior to scheduling this case for 1<sup>st</sup> Reading at City Council.
- 5) Development of this property should be limited to uses and intensities which will not exceed or vary from the projected traffic conditions assumed in the TIA, including peak hour trip generations, traffic distribution, roadway conditions, and other traffic related characteristics.

If you have any questions or require additional information, please contact me at 974-2788.



Emily M. Barron  
Sr. Planner - Transportation Review Staff  
Watershed Protection and Development Review